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1984

## Laura Thompson v. Brent Thompson : Respondent's Brief

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IN THE SUPREME COURT  
OF THE  
STATE OF UTAH

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LAURA THOMPSON,	:	
	:	
Plaintiff-Respondent,	:	
	:	
vs.	:	Case No. 19059
	:	
BRENT THOMPSON,	:	
	:	
Defendant-Appellant.	:	

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RESPONDENT'S BRIEF

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Appeal from a Final Order of the Third Judicial  
District Court in and for Salt Lake County.  
State of Utah, Honorable Jay E. Banks

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**FILED**

AUG 31 1984

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### STATEMENT OF THE CASE

The appeal contests the part of an order entered on February 17, 1983 by the Honorable Jay E. Banks which modified a divorce decree so as to require the Appellant to pay a debt not specifically mentioned in the decree.

### DISPOSITION MADE IN THE LOWER COURT

Following a full hearing on Plaintiff-Respondent's Order to Show Cause why, inter alia, the decree should not be modified, the court modified the decree to order Defendant-Appellant to keep current the debt owed to United Bank in Murray, Utah and secured by Plaintiff-Respondent's automobile.

### RELIEF SOUGHT ON APPEAL

Respondent requests affirmation of the district court's order modifying the decree or, in the alternative, a remand with instructions to enter judgment on the original decree for all arrearages and to enter an order directing Appellant to make all future payments on the debt in question.

### STATEMENT OF THE FACTS

The Respondent agrees with the statement of facts set forth in Appellant's brief except as to the following particulars:

1. The Respondent controverts the statement that the "Decree did not order Appellant to make the car payments...". Although the original decree did not specifically order the Appellant to make the car payments on the automobile in question, it did

order Appellant to pay "any and all other debts," and to pay them so far as possible from the proceeds of his one-half interest in a trust deed note. (R.p.52, item no. 6).

2. The Respondent controverts the statement that, "There is no evidence in the record of changed circumstances between the parties occurring after the entry of the Decree of Divorce." The trial court, following a full hearing, entered findings of fact to the effect that the debt in question was paid current by the Appellant at the time of, and for several months after, entry of the decree (R.p. 087, item no. 4). Payment was made in the form of a lump sum payment by the Appellant prior to entry of the decree (R.p. 086-087, item no. 3). Therefore, the debt was not in default, and Respondent was not threatened with the loss of her vehicle, until several months thereafter. The court also found that Appellant's refusal to continue to make the payments resulted in the Respondent having to cover the payment to avoid repossession of the automobile she needed to continue work and to care for her children (R.P. 37, item no. 6).

#### ARGUMENT

##### POINT 1

THE APPROPRIATE STANDARD OF REVIEW ALLOWS  
THE TRIAL COURT BROAD DISCRETION IN THE EXERCISE OF ITS  
EQUITABLE POWERS AND CONTINUING JURISDICTION.

The trial court has broad discretion in the exercise of its equitable powers and continuing jurisdiction and, therefore, the trial court's decision should not be disturbed so long as

is reasonably supportable in the record. Utah Code Annotated, § 30-3-5 (1953) gives the trial court continuing jurisdiction to modify the decree and case law allows the trial court to exercise such jurisdiction within the limits of reason and prudence. In Sundquist v. Sundquist, 639 P.2d 181 (Utah, 1981), the court reiterates its position that, "[S]ection 30-3-5 does authorize the divorce court to reallocate property rights between the parties to the divorce...". Id. at 186. In Flannery v. Flannery, 536 P.2d 136 (Utah, 1975), the court states that, "[T]he court has continuing jurisdiction to make changes in the . . . distribution of property as shall be reasonable and prudent."

The court articulates the standard of review to be applied to decree modifications in the recent case of McCrary v. McCrary, 599 P.2d 1248 (Utah, 1980). The court in McCrary also indicates where the burden of proof lies and the deference which should be afforded the factual determinations of the trial court.

"Under Utah law, a trial court granting a decree of divorce is afforded considerable discretion in the area of property distribution. Moreover, the court has continuing jurisdiction over the parties with regard to the decree, enabling it to make such subsequent modifications as are equitable. The breadth of discretionary power given the trial court in the initial determination of the property division extends in equal measures to these subsequent modifications.

In these matters, a party seeking a reversal of the trial court must prove a misunderstanding or misapplication of the law resulting in substantial and prejudicial error, or that the evidence clearly preponderated against the findings, or that such a serious inequity resulted from the order as to constitute an abuse of the trial court's discretion. It is not the role of the Appellate forum in such cases to evaluate the sagacity of the trial court's decision, being based as it is on shadings of fact and circumstance

unavailable to the reviewing court. If the decision rests properly within the bounds of judicial discretion imposed by law, our inquiry is at an end...

...The trial court's ruling in the present action comports with that standard. Regardless of our own inclinations based strictly upon the record before us, Defendant has shown us no facts or circumstances enabling us to treat the decision below as being so inequitable or devoid of evidentiary support as to constitute the abuse of discretion alleged. The burden of proof has not been met, and the decision is therefore affirmed.

## POINT 2

THE APPELLANT HAS FAILED TO MEET HIS BURDEN OF PROOF THAT THE TRIAL COURT'S ORDER WAS SO INEQUITABLE OR DEVOID OF EVIDENTIARY SUPPORT AS TO CONSTITUTE A REVERSIBLE ABUSE OF DISCRETION

The Appellant argues that the evidence does not show a change in circumstances and, therefore, the modification was an abuse of discretion. The Respondent controverts that conclusion in three particulars. First, the record supports the conclusion that there was a substantial change of circumstances. The trial court's findings of fact relative to the modification indicate that at the time the decree was entered Appellant was not only current on his payment of the debt in question, but had paid several months in advance (R.p. 87, item no. 4). Based on this fact, neither the court nor the Respondent had reason to doubt that Appellant would continue to pay the debt, that Appellant understood the debt to be his obligation, or to anticipate that the Respondent would have to pay the monthly payment to avoid repossession of her means of transportation (R.p. 87, item no. 5). Therefore, when Appellant unexpectedly ceased to make payments



subsequent to entry of the decree, a substantial change occurred which required the court to exercise its equitable powers on behalf of the Respondent.

Secondly, it is questionable whether in substance the court's order relative to the debt in question constituted a modification of the original decree. Although the order was so labeled, the record is clear that the debt in question existed at the time the decree was entered (R.p. 87 item no. 4) and that the decree, without specifically mentioning the debt, declared "any and all other debts" to be the responsibility of the Appellant (R.P. 521 item no. 6). In the case of Zaharias vs. Zaharias, 652 P.2d 1312 (1982) the court ruled that no showing of a change of circumstances is required where the court merely construes the language of the decree. In substance, the order of the court now being reviewed constituted a construction of the language of the original decree, rather than a modification. Accordingly, under principles articulated in the Zaharias case, the order is supportable without a showing of change in circumstances.

Finally, the result reached by the trial court is equitable on the basis that the Appellant's advance payment evidenced that he had agreed to make such payments and, therefore, that the court was not unexpectedly imposing this burden upon him. The court upon a full hearing unequivocally rejected Appellant's argument that such advance payment was simply a pay back of excess money he had borrowed for an extraneous purpose (R.p. 87, item no. 4).

### POINT 3

IF THE DOCTRINE OF RES JUDICATA PREVENTS THE MODIFICATION; THEN  
THE APPELLANT IS RESPONSIBLE FOR THE DEBT UNDER THE TERMS OF  
THE ORIGINAL DECREE

Appellant argues that property distribution issues were fully litigated prior to the original divorce decree and, therefore, that the doctrine of res judicata precludes relitigation. The Respondent contends that if the property distribution were fully litigated prior to the decree, and if the matter of the debt in question were considered, then the decree clearly fixed responsibility for payment of the debt on the Appellant under the language that Appellant was to pay "any and all other debts" (R.p. 52, item no. 6). Therefore, the order of the court did not modify the decree, it merely clarified it by giving a reasonable interpretation to its language.

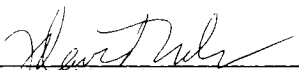
### CONCLUSION

The trial court is allowed broad discretion in exercising its equitable powers and its continuing jurisdiction to modify divorce decrees. Accordingly, the Supreme Court should not disturb the judgment of the trial court unless it is obviously inequitable or devoid of evidentiary support. The Appellant has failed to satisfy this standard because the record shows that the decision of the trial court was equitable and that there was a substantial change of circumstances, or in the alternative, that there was no need to show a change in circumstances because the original decree clearly fixed the responsibility

for payment of existing debts on the Appellant.

Respectfully submitted this 3d day of August, 1984.

BAILEY & NELSON, P.C.

  
\_\_\_\_\_  
J. David Nelson  
Attorney for Respondent

MAILING CERTIFICATE

I hereby certify that I <sup>hand carried</sup> ~~mailed, postage pre-paid~~, two true  
and correct copies of the Respondent's brief to:

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on this 3 day of August, 1984.

  
\_\_\_\_\_  
Glenna Warrick